

05-30046

United States Court of Appeals For the First Circuit

No. 07-1545

UNITED STATES,

Appellee,

v.

EDUARDO PAGAN,

Defendant, Appellant.

Lynch, Chief Judge,
Torruella and Boudin, Circuit Judges.

JUDGMENT

Entered: August 21, 2008

Appellant challenges his sentence on the ground that an earlier felony conviction, relied upon in the 21 U.S.C. § 851 information filed by the government, was invalid. The district court gave the question careful consideration, holding an evidentiary hearing on the question. It concluded that (1) appellant had not carried his burden of demonstrating a constitutional infirmity in the colloquy preceding his plea of guilty to the earlier felony, (2) appellant's testimony regarding what he understood at the time of the colloquy was not credible, and (3) that § 851(e) barred appellant from challenging the conviction which was entered more than five years before the instant information was filed.

On de novo review of the constitutional and statutory rulings, we see no error. As these rulings are dispositive, the judgment must be, and is, affirmed.

By the Court:

/s/ Richard Cushing Donovan, Clerk.

[cc: Dina Chaitowitz, Mark Quinlivan, Paul Hart Smyth,
H. Ernest Stone]